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IN THE

Supreme Court of the United States

October Term, 1982

UNITED STATES OF AMERICA,

Petitioner,

v.

ARTHUR YOUNG & COMPANY

and

AMERADA HESS CORPORATION,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF *AMICUS CURIAE* OF THE COMMITTEE ON CORPORATE LAW DEPARTMENTS OF THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK

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TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
INTEREST OF *AMICUS CURIAE*	1
OPINION BELOW; JURISDICTION; STATUTES INVOLVED	4
SUMMARY OF ARGUMENT	4
ARGUMENT	5
I. THE WORK PRODUCT DOCTRINE FOR INDEPENDENT AUDITORS' TAX ACCRUAL WORKPAPERS SUPPORTS THE INTEGRITY OF AUDITED FINANCIAL STATEMENTS AND THE RELIABILITY OF THE INDEPENDENT AUDIT PROCESS	5
A. The IRS is seeking to penetrate confidential thoughts and communication of a taxpayer and and its auditor	5
B. The work product doctrine properly protects the integrity of the audit process	7
II. IT IS UNNECESSARY FOR THE IRS TO INVADE THE CONFIDENTIAL RELATIONSHIP BETWEEN A TAXPAYER AND ITS AUDITOR	10
III. CREATION OF A DOCTRINE TO PROTECT THE TAX ACCRUAL WORKPAPERS OF INDEPENDENT AUDITORS IS WITHIN THE AUTHORITY OF THE FEDERAL COURTS	13
A. Federal Courts are authorized to create rules of privilege	13
B. In adopting a doctrine to protect an independent auditor's tax accrual workpapers, the Court of Appeals properly performed the judicial function of harmonizing conflicting federal statutory policies	14
CONCLUSION	16

TABLE OF AUTHORITIES

Cases — Page

Administrator, Federal Aviation Administration v. *Robertson*, 422 U.S. 255 (1975) 15

In re Dinnan, 661 F.2d 426 (5th Cir. 1981), *cert. denied*, 457 U.S. 1106 (1982) 14

Gray v. *Board of Higher Education, City of New York*, 692 F.2d 901 (2d Cir. 1982) 14

In re Hampers, 651 F.2d 19 (1st Cir. 1981) 10, 14

Hickman v. *Taylor*, 329 U.S. 495 (1947) 12

In re LTV Securities Litigation, 89 F.R.D. 595 (N.D. Tex. 1981) 8, 9-10, 14

Ott v. *St. Luke Hospital of Campbell County*, 522 F. Supp. 706 (E.D. Ky. 1981) 14

Trammel v. *United States*, 445 U.S. 40 (1980) 13, 14

United States v. *El Paso Co.*, 682 F.2d 530 (5th Cir. 1982), *petition for cert. filed*, 51 U.S.L.W. 3342 (U.S. Oct. 22, 1982) (No. 82-716) 9

United States v. *Euge*, 444 U.S. 707 (1980) 7

United States v. *Green*, 670 F.2d 1148 (D.C. Cir. 1981) 14

United States v. *Nixon*, 418 U.S. 683 (1974) 8

United States v. *Sells Engineering, Inc.*, 103 S.Ct. 3133 (U.S. 1983) 11

Upjohn Co. v. *United States*, 449 U.S. 383 (1981) 4, 8, 14, 15

Watt v. *Alaska*, 451 U.S. 259 (1981) 15

Statutes and Rules

INTERNAL REVENUE CODE, 26 U.S.C. § 7602 ..... *passim*

FEDERAL RULE OF CIVIL PROCEDURE 26(b)(3) 12

FEDERAL RULE OF EVIDENCE 501 13,14

Congressional Reports

H.R. REP. No. 650, 93d CONG., 1ST SESS. (1973) 13

S. REP. No. 1277, 93d CONG., 2d SESS. (1974) 13

Other

C. MCCORMICK, HANDBOOK OF THE LAW OF EVIDENCE § 72 (2d ed. 1972) 8

8 J. WIGMORE, EVIDENCE § 2285 (McNaughton Rev. 1961) 8

23 C. WRIGHT & K. GRAHAM, FEDERAL PRACTICE AND PROCEDURE § 5422 (1980) 13

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INTEREST OF *AMICUS CURIAE*

The Association of the Bar of the City of New York (the "Association") is a voluntary membership organization of the legal profession in New York City. Its members are private and public practitioners, trial and appellate judges in state and federal courts, legislators and law professors. Since its inception in 1871 the Association has taken an active interest in important legal issues. The Committee on Corporate Law Departments (the

"Committee") is a standing committee of the Association and is composed of chief legal officers of major corporations in the New York City area.

The Committee appears in this case as *amicus curiae* to argue that the public interest in dependable corporate financial data upon which, in part, the public disclosure process of the federal securities laws rests, deserves precedence over the interest of the Internal Revenue Service ("IRS") in unlimited disclosure of the thought process of auditors and their clients, because the IRS has available to it other sources of information and the powerful legal process of 26 U.S.C. § 7602 with which to investigate the adequacy of reporting to the IRS by a taxpayer of its tax liability.

Lawyers play a crucial role in the public disclosure process mandated by the federal securities laws. They are intimately involved in the procedures whereby publicly held companies fulfill their responsibilities in this area. Indeed, in recent years the Securities and Exchange Commission ("SEC") has sought to increase the role of attorneys in connection with the disclosure process. A continuing problem faced by lawyers has been the extent to which communications between them and their clients or their client's independent auditors may take place on the full and frank basis so central to the policies underlying the federal securities laws without prejudicing the client by exposing the communication to discovery by a party adverse to the client.

Candor in assisting an auditor depends upon a sense of confidence that the information a lawyer relates to a client's auditor will remain confidential. This is particularly true in the area of tax liability. The application of the tax laws to corporate transactions often involves close judgment calls. The circuits themselves have not always been able to agree on the interpretation of the complicated provisions that govern the taxation of corporate transactions. Thus, in giving guidance to their clients on tax matters, tax lawyers must often make predictions as to the position that the IRS or courts will take on unsettled issues. These assessments are vital to the process of establishing adequate tax reserves and find their way into the auditor's work papers either

directly via communications from the lawyer to the auditor or indirectly through communications from the client derived from opinions of the tax lawyer.

If the IRS is afforded an absolute right to obtain the work papers, it becomes privy to these delicate exercises of judgment by tax lawyers. Moreover, the IRS, by seeing how the tax lawyers and their clients assess the strength of a particular position, will receive an invaluable advantage in the settlement process, which is the end product of most audits. In some cases, indeed, the IRS will even learn from the work papers the figure or range at which the taxpayer, on the advice of his tax lawyer, is prepared to compromise a tax issue. This makes the whole tax audit process so lopsided that it can only inhibit the exchange of frank opinions and figures between tax lawyers, their clients and the auditors.

Accordingly, we believe that the Bar has a significant interest in supporting the authority of the federal courts to continue to develop appropriate doctrines protecting confidential disclosure as exemplified by the decision of the Court of Appeals. The establishment and definition of such limitations on the power of the IRS to obtain an auditor's judgments on the adequacy of a client's tax accrual reserve, and the thought process supporting such judgment, should be left to the courts.

In addition, the Bar has a particular responsibility to resist Governmental efforts to adopt practices which are at variance with elementary fairness. The Government has been frank to admit in its briefs that the IRS is seeking access to auditors' opinions, theories and judgments about the propriety of the taxpayer's reporting positions and the taxpayer's state of mind. In a democratic society, it is fundamentally unfair to permit the Government to penetrate such confidential thoughts of taxpayers (absent allegations of fraud or crime), particularly where the effect of such access may be to undercut the candor and breadth of disclosures by taxpayers to their auditors and thereby risk compromising the procedures designed by Congress to protect investors from inaccurate financial information.

All parties have consented to the filing of this *amicus curiae* brief.

OPINIONS BELOW; JURISDICTION; STATUTES INVOLVED

We adopt the statement of the Opinions Below, Jurisdiction, and Statutes Involved set forth in Petitioner's brief.

SUMMARY OF ARGUMENT

The issue presented here raises the question of whether the IRS can lay bare the thoughts and legal theories of a taxpayer and its independent auditor. The IRS would like to obtain the theories and thoughts that are set forth in an auditor's tax accrual workpapers because they will serve as a "roadmap" for its audit. The main thrust of the Government's argument rests on convenience and not on a need to ascertain the correctness of tax returns. By seeking to take a "short cut" the government will compromise important federal policies.

The court of appeals properly rejected "considerations of [IRS] convenience", *Upjohn Co. v. United States*, 449 U.S. 383 (1981), and acted well within its authority by establishing a doctrine to protect the tax accrual workpapers of auditors from production to the IRS pursuant to its subpoena under 26 U.S.C. § 7602. The fact that a privilege which limits disclosure of such workpapers to the IRS in appropriate circumstances has not previously been established by this Court is not dispositive of the issue presented.

The court of appeals protected tax accrual workpapers from production to the IRS because of the clear prejudice that would flow from IRS access to an auditor's analysis and the taxpayer's basic thinking, much of which was developed after the tax return at issue has been filed. To give the IRS access to an auditor's tax accrual workpapers, absent an allegation of fraud or a showing of overwhelming necessity, is fundamentally and inherently unfair. It unnecessarily expands the IRS' power to intrude itself into the thought and decision-making processes of a taxpayer, its tax

lawyers, and its auditors. Disclosure of this information gives the IRS a devastating advantage, especially when it has not shown any need for such an advantage.

Moreover, to permit the IRS to summons an auditor's tax accrual workpapers will inhibit candid communication with auditors which will serve to compromise the integrity of the auditing process. As a result, the Congressional objective of accurate and adequate disclosure of financial information to the investing public will be harmed.

ARGUMENT

I.

THE WORK PRODUCT DOCTRINE FOR INDEPENDENT AUDITORS' TAX ACCRUAL WORKPAPERS SUPPORTS THE INTEGRITY OF AUDITED FINANCIAL STATEMENTS AND THE RELIABILITY OF THE INDEPENDENT AUDIT PROCESS.

A. The IRS is seeking to penetrate confidential thoughts and communications of a taxpayer and its auditor.

Tax collection is a pragmatic business. IRS and taxpayer personnel negotiate tax issues in a manner similar to that of representatives of other litigants. As the court of appeals said below:

> In reality, at the end of an audit, the IRS and the taxpayers frequently compromise out their differences, each giving in a little. Such negotiations strike an appropriate balance between collecting revenue and conserving judicial resources, but requiring the taxpayer alone to disclose settlement positions would improperly weight the balance.

United States v. Arthur Young & Co., 677 F.2d 211, 220 (1982). Both the IRS and the taxpayer have justifiable reason for satisfaction in a settlement that falls within their respective estimates of liability if adjudicated.

It would be easy to understand the outrage of a commercial litigant if his counsel were compelled by the court to reveal to the

adversary all of the information in counsel's possession covered by the attorney-client and attorney work-product privileges, especially if the adversary's counsel were compelled to reveal nothing. Similarly, a taxpayer whose independent auditor is compelled by 26 U.S.C. § 7602 to reveal to the taxpayer's adversary, the IRS, all information obtained by the auditor on issues bearing on the taxpayer's potential tax liability, all of which would be privileged if instead it were information of the taxpayer's lawyer, is justifiably outraged for the same reason.

The government claims that "the Service's chief interest is to discover the relevant facts" (Pet. br. at 10; also see 26-27). If that is the case, the government should pursue other sources, especially primary sources - the taxpayer's personnel and records.

In actuality, however, it turns out the IRS is looking past the facts toward something else:

> The *point* of the tax accrual workpaper process is to organize the facts; the papers will in effect embody the taxpayer's and the accountant's judgments about which facts are *relevant* to the taxpayer's lawful tax liability.

Pet. br. at 25-26. It is clear enough that the IRS *really* wants: "access to the accountant's 'opinions' and 'theories'" (*id.*), even though the brief says that such access is not the primary objective (*id.* at 10); "the accountant's - and, indirectly, the taxpayer's - opinions and judgments about the propriety of the corporation's reporting positions and about the potentials for and strength of an IRS challenge to those positions" (*id.* at 26); ". . . highlighting the vulnerabilities of the taxpayer's positions and . . . suggesting alternative theories" (*id.* at 27; similarly, at 10); "They [the tax accrual workpapers] may also shed important light on the taxpayer's state of mind . . . ; this evidence may bear on liability for fraud and other penalties." (*id.* at 10; similarly, at 25). Some of this information comes from attorneys.

In other words, the IRS wants the taxpayer's and auditor's innermost thoughts on the possible existence of potential *issues*,

their *evaluations* of those issues, their admissions as to weaknesses and *vulnerabilities*, and betrayals of the taxpayer's "state of mind" for threats of fraud and other penalties.

In order to justify a search for admission of taxpayer fraud in tax accrual workpapers, the government should be engaged in a criminal or civil fraud investigation, and should have adequate reason to believe that the workpapers or the related communications by the taxpayer to its auditor are a part of the fraud itself. Otherwise, it is basically offensive to ordinary concepts of fairness for the IRS to be attempting to penetrate confidential thoughts and communications of taxpayer and auditor for unrelated bona fide purposes to fulfill professional requirements, including, in the case of many taxpayers, the federal securities statutes.

The government brief (Pet. br. at 12, 40) and the dissenting opinion in the Court of Appeals (677 F.2d at 222-23) are both based on the unrealistic assumption that because of the requirements of the federal securities laws, the information available to independent auditors concerning their clients' potential tax liabilities would remain unaffected if a privilege for the auditors' tax accrual workpapers were to be denied. A modest acquaintance with human nature will confirm the contrary. If a person feels secure that his statements will be held in confidence, he will speak much more expansively and fully than he would otherwise. An audit client or attorney who is concerned that the client's confidence to his auditor will be scrutinized by the IRS will be much more guarded with his information than otherwise, and the auditor will learn much less.

B. The Work Product Doctrine Properly Protects the Integrity of the Audit Process

It is clear that the powers of the IRS to compel disclosure pursuant to a subpoena under 26 U.S.C. 7602 are not absolute. Courts have the power to modify or balance in appropriate circumstances the broad summons power given to the IRS. *United States* v. *Euge*, 444 U.S. 707, 716 & n.9 (1980). It is well

established that common law privileges serve to limit the scope of the IRS' summons power. *Upjohn* v. *United States*, 449 U.S. 383 (1981).

Privileges or doctrines limiting disclosure are "an exception to the general liability of every person to give testimony upon all facts inquired of in a court of justice." 8 J. WIGMORE, EVIDENCE § 2285 (McNaughton ed. 1961). Accordingly, privileges "are not lightly created nor expansively construed." *United States* v. *Nixon*, 418 U.S. 683, 710 (1974). "Their sole warrant is the protection of interests and relationships which, rightly or wrongly, are regarded as of sufficient social importance to justify some incidental sacrifice of sources of facts needed in the administration of justice." C. MCCORMICK, MCCORMICK'S HANDBOOK OF THE LAW OF EVIDENCE § 72 (2d ed. 1972).

The merits of an existing privilege or doctrine limiting disclosure should be examined flexibly with consideration of conditions and imperatives then prevailing. "Changing circumstances require courts constantly to review the need for and extent of existing privileges .... Similarly, as an evolving society engenders new relationships, courts must consider whether interests are created that require some form of protection." *In re LTV Securities Litigation*, 89 F.R.D. 595, 621 (N.D. Tex. 1981).

An auditor's tax accrual workpapers deal primarily with judgments, opinions and thoughts and to the extent any facts are included they are readily available to the IRS directly from the taxpayer. In consequence, we submit that the merits of the new doctrine for tax accrual workpapers of independent auditors are so evident and so substantial, and the inconvenience to the government (especially with the "substantial need" and "undue hardship" qualification) is so minor, that the doctrine should be recognized by this Court.

A considerable portion of the government's brief (Pet. br. at 28-42) is devoted to the argument that "the creation of this new privilege was unwarranted, and rested on significant errors in the court's analysis" (Pet. br. at 21). The essence of this argument is

simply that since the characteristics of the new privilege for auditors' tax accrual workpapers differ in part from those of existing privileges, adoption of the privilege is unacceptable. The opinion in *United States* v. *El Paso Co.*, 682 F.2d 530 (5th Cir. 1982), *petition for cert. filed*, 51 U.S.L.W. 3342 (U.S. Oct. 22, 1982) (No. 82-716), involving the parallel though distinguishable issue of tax accrual workpapers prepared by a company's internal accountants and lawyers, is a judicial example of that line of reasoning.[1] If that approach had been applied consistently throughout the past several centuries, there would today be no common-law privileges or the attorney work-product doctrine.

The Court of Appeals below said clearly that it was *carving out* a new "work-product privilege, similar to the [attorney] privilege fashioned in *Hickman*." 677 F.2d at 221. "Similar" and "analogy", 677 F.2d at 223 (Newman, J., dissenting), connote not only similarities, but also some dissimilarities. Extended argument directed to the nonconformity and irreconcilability of the new privilege with existing privileges never reaches the real issue before this Court—whether the nature of auditors' tax accrual workpapers merits the qualified limited privilege recognized by the Court of Appeals.

In *In re LTV Securities Litigation*, 89 F.R.D. 595, 618 (N.D. Tex 1981), the court created a "hybrid" privilege, with the observation that "[t]he privilege here recognized is neither an attorney-client nor work-product privilege, although it draws from both." *Id.* at 622. The privilege applied to testimony demanded of, and documents submitted to or prepared by, an attorney retained by a corporate audit committee as a "special officer," pursuant to a consent decree in an SEC injunction suit under the securities laws, with responsibility for investigating alleged corporate irregularities, and with reporting responsibilities both to the audit committee and to the SEC. The court rejected the contention by a class of plaintiff shareholders in a related private litigation "that

1. In *El Paso* the court of appeals found that the work-product doctrine was unavailable because the documents involved had not been prepared "in anticipation of litigation" as would be required to protect an attorney's work-product under Rule 26(b). 682 F.2d at 542.

unless the Special Officer fits squarely within the attorney-client privilege or the work-product rule, he cannot assert any privilege against their discovery", *id.* at 621, stating that:

> Both the attorney-client and work-product privileges were judicially created concepts. Their history has shown them to be reasonably flexible. Their precise dimensions have been proved to be sufficiently malleable to fulfill their central purposes as the nature of the circumstances under which they were asserted have changed. The class' argument is ultimately premised upon a rigidity of concept these privileges were never saddled with. Despite decades of refinement, the outer limits of the privileges are still amorphous. . . . The very nature of the subject precludes the type of wooden application of inflexible rules urged upon this court.

Id.

The court went to the heart of the issue - the intrinsic merits of a privilege fashioned to the need of the particular circumstances. Examining separately the two roles of the special officer's hybrid function, as private investigating counsel and government investigator, the court concluded that most if not all of the information sought by the plaintiff class would have been protected either by the attorney-client and work-product privileges or by federal statute and SEC rules, respectively. The court concluded that the "legitimate needs" (*id.* at 618) of LTV and of the SEC and the effective execution of the dual assignment justified the recognition of an unconventional privilege. *Id.* at 614-21.

II.

IT IS UNNECESSARY FOR THE IRS TO INVADE THE CONFIDENTIAL RELATIONSHIP BETWEEN A TAXPAYER AND ITS AUDITOR.

In view of an inherent indefiniteness of what constitutes adequate disclosure under the securities laws, some audit clients may take varying amounts of risk to avoid the danger of betrayal to the IRS. In *In re Hampers*, 651 F.2d 19, 23 (1st Cir. 1981), the court

said critically that "The United States blithely asserts that criminal and other sanctions provide more than enough teeth to guarantee continued compliance with the tax laws." In that case, the court recognized a new qualified privilege from disclosure of state sales tax returns to a federal grand jury. In the present case, the government is making the same assertion as to compliance by taxpayers with the federal securities laws.

Similar judicial reasoning appears in the majority opinion in the recent *United States v. Sells Engineering, Inc.*, 103 S.Ct. 3133 (1983), in which this Court interpreted the Federal Rules of Criminal Procedure as denying a right of automatic access to grand jury materials by Department of Justice Civil Division attorneys preparing a related civil suit, and as requiring a specific court order based upon a "strong showing of particularized need for grand jury materials. . . ." *Id.* at 3148. As the opinion observes (*id.* at 3142), automatic disclosure

> renders considerably more concrete the threat to the willingness of witnesses to come forward and to testify fully and candidly. If a witness knows or fears that his testimony before the grand jury will be routinely available for use in governmental civil litigation or administrative action, he may well be less willing to speak for fear that he will get himself into trouble in some other forum.

The duty of a grand jury witness to testify, and the dangers of lack of candor (*e.g.*, charges of perjury, contempt, obstruction), are much more pointed than the nature of the duty of an audit client to discuss his potential tax problems with his auditor. Even in the much stronger grand jury situation, this Court declined to accept the government's assertion that the existence of a duty to disclose can be depended upon to assure that a person will not be deterred from disclosing by the danger of prejudicial consequences from his disclosure. Also, the opinion dissipates any force in the argument of the dissenting opinion below that "The majority's privilege for accountants may be the first instance of a court creating a privilege to facilitate compliance with duties already imposed by law." 677 F.2d at 224 [footnote omitted].

The IRS has awesome power under 26 U.S.C. § 7602 to extract information both from primary sources, *i.e.*, the executives and other personnel and the records of taxpayers, and from other sources. The section states in sweeping generality that in "ascertaining the correctness of any return . . . [or] determining . . . liability . . . for any internal revenue tax . . . , the Secretary . . . is authorized . . . [t]o examine any . . . data which may be relevant or material . . . [and] [t]o summon . . . any . . . person . . . to produce such . . . data, and to give such testimony, under oath, as may be relevant or material to such inquiry. . . ." 26 U.S.C. § 7602.

In all but a few exceptional cases, the power in that section makes it unnecessary for the IRS to commit the gross unfairness of compelling the production of information that should remain confidential between a taxpayer and its auditors. As the Court of Appeals below said of the qualified character of its new doctrine:

> At the same time, it allows the IRS to procure these documents when the rare situation arises where it can make a sufficient showing of need to adequately justify invading the integrity of the auditing process, cf. *Hickman*, 329 U.S. at 512-13, 67 S.Ct. at 394, Fed.R.Civ. 26(b)(3).

677 F.2d at 221 [footnote omitted]. The cited portion of Federal Rule of Civil Procedure 26(b)(3) derived from *Hickman* v. *Taylor*, 329 U.S. 495 (1947), permits discovery despite the attorney work product privilege

> only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of his case and that he is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation.

FED. R. CIV. P. 26(b)(3).

Such a qualification enables a court in a particular controversy to assure that the government's investigation is not impeded unfairly for lack of access to tax accrual workpapers.

III.

CREATION OF A DOCTRINE TO PROTECT THE TAX ACCRUAL WORKPAPERS OF INDEPENDENT AUDITOR IS WITHIN THE AUTHORITY OF THE FEDERAL COURTS.

A. Federal courts are authorized to create rules of privilege.

The common law of privilege and doctrines limiting disclosure are a product of judicial formulation over centuries of experience. The power of the federal courts to continue to develop rules of privilege is clear from the language of Federal Rule of Evidence 501, the committee reports of the congressional deliberations upon the Federal Rules of Evidence, and interpretations by this Court and the lower courts. Rule 501 provides in part that:

> [T]he privilege of a . . . person . . . shall be governed by the principles of the common law as they may be interpreted by the courts of the United States in the light of reason and experience.

FED. R. EVID. 501.

Further, the committee reports of both the Senate and the House of Representatives specify that the law of privilege is "to be developed by the courts of the United States." S. REP. No. 1277, 93d CONG., 2d SESS.6 (1974); H.R. REP. No.650, 93d CONG., 1st SESS. 8 (1973). Rule 501 was adopted in lieu of an alternative proposal that would have codified the rules of privilege, tending to freeze them in a statutory mold. 23 WRIGHT & GRAHAM, FEDERAL PRACTICE AND PROCEDURE § 5422 at n.46 (1980).

This Court has said that in

> enacting Rule 501, Congress manifested an affirmative intention not to freeze the law of privilege. Its purpose rather was to "provide the courts with the flexibility to develop rules of privilege on a case-by-case basis," 120 Cong. Rec. 40891 (1974) (statement of Rep. Hungate), and to leave the door open to change.

Trammel v. *United States*, 445 U.S. 40, 47 (1980). In *Upjohn Co.* v. *United States*, 449 U.S. 383, 396-97 (1981), involving an internal revenue summons under 26 U.S.C. § 7602, this Court relied in part upon rule 501 in adopting the more expansive of the disputed interpretations of the attorney-client privilege.

The lower courts have interpreted this Court's statements as authorizing them to consider the adoption of new rules of privilege not existing at the time of the enactment of rule 501. *See, e.g., Gray* v. *Board of Higher Education, City of New York*, 692 F.2d 901, 904-05 (2d Cir. 1982), and *In re Dinnan*, 661 F.2d 426, 429 (5th Cir. 1981), *cert. denied*, 457 U.S. 1106 (1982) (both opinions considering and rejecting a privilege as to votes cast on academic tenure); *United States* v. *Green*, 670 F.2d 1148, 1155 (D.C. Cir. 1981) (recognizing a qualified privilege protecting police surveillance locations from disclosure); *In re Hampers*, 651 F.2d 19, 23 (1st Cir. 1981) (recognizing a qualified privilege from disclosure to a federal grand jury of state sales tax returns); *Ott* v. *St. Luke Hospital of Campbell County*, 522 F. Supp. 706, 708 (E.D. Ky. 1981) (considering and rejecting a privilege for deliberations of hospital peer review committee); *In re LTV Securities Litigation*, 89 F.R.D. 595, 618-21 (N.D. Tex. 1981) (recognizing a "hybrid" qualified privilege for work-product of attorney appointed special officer pursuant to decree in SEC enforcement suit).

The discretion of the federal courts in this area, confirmed by Congress in its approval of rule 501, refutes the contention made in the dissenting opinion below (677 F.2d at 22) and quoted by the government (Pet. br. at 8) that the courts should leave the recognition of new privileges to Congress.

B. In adopting a doctrine to protect an independent auditor's tax accrual workpapers, the Court of Appeals properly performed the judicial function of harmonizing conflicting federal statutory policies.

The government asks this Court to deny protection for an independent auditor's tax accrual workpapers by citing canons of

statutory construction that "repeals by implication are disfavored", and that conflicting statutes "capable of coexistence" are to be construed so that each is effective. Pet. br. at 44. The government's attempt to portray the recognition of the auditor's workpapers doctrine as amounting to an implied repeal of the summons provisions of 26 U.S.C. § 7602 is misguided.

The mere existence of a statute, such as 26 U.S.C. § 7602, mandating disclosure of documents does not bar the recognition of a privilege that in some cases restricts the scope of disclosure. *Cf. Administrator, Federal Aviation Administration* v. *Robertson*, 422 U.S. 255 (1975) (Freedom of Information Act construed to exempt from public disclosure certain FAA reports concerning airline safety). Where a conflict exists between policies of two statutes, as it does in this case between the securities laws and revenue laws, sole reliance on one of the two "would assume the answer to the question at issue." *Watt* v. *Alaska*, 451 U.S. 259, 266 (1981). As perceived by Judge Feinberg below, no matter how the issue is decided, "one policy has to bend a bit." 677 F.2d at 220.

By recognizing the auditor's workpaper doctrine, the Court of Appeals below fulfilled the accepted judicial function of harmonizing conflict between *ad hoc* legislative enactments, in this instance the securities laws and the revenue laws, giving "effect to each . . . while preserving their sense and purpose." *Watt* v. *Alaska*, 451 U.S. at 267. The privilege recognized in this case fosters the goals of the securities laws by promoting accurate reporting to the public without unreasonably curtailing the extensive enforcement powers of the IRS. Since the auditor's workpaper doctrine is qualified, a court may compel disclosure if the IRS can make a showing of substantial need and the inability to obtain the substantial equivalent by other means without undue hardship, sufficient to overcome the protections of the privilege. *Upjohn Co.* v. *United States*, 449 U.S. 383, 401-02 (1981). The doctrine furthers the policy of the securities acts while restraining unwarranted encroachment by the revenue laws.

CONCLUSION

For the foregoing reasons, the judgment of the Court of Appeals insofar as it reversed the District Court's order that the tax accrual workpapers be produced should be affirmed.

Dated: September 9, 1983
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